IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
CRIMINAL JAIL APPEAL No. 89 of 2006
(Old No. 945 of 1991)

Luxmi Dutt S/o Sheesh Ram, R/o Garkot P.S. Patti Garkot, Tehsil Champawat, Distt. Pithoragarh .....Appellant

Versus

The State .....Respondent

Dated: November 02, 2007

Sri Kuldeep Singh Rawal, learned amicus curiae for the appellant
Sri Harish Pujari, learned Addl. GA for the State

HON. DHARAM VEER, J.

This is a jail appeal preferred by the appellant-Luxmi Dutt through jail u/s 374(2) of Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 22.08.1988 passed by Sessions Judge, Pithoragarh in Sessions Trial No. 18 of 1988, State v. Luxmi Datt, whereby the learned Sessions Judge has convicted the appellant-Luxmi Datt under Section 436 of Indian Penal Code, 1860 *(hereinafter to be referred as I.P.C.)* and sentenced him for four years R.I.

2. In brief, the prosecution case is that on 28.04.1988 Raghuvar Dutt and other villagers had sent a report to Patti Patwari, Circle Garkot, Distt. Pithoragarh with the averments that appellant-Luxmi Dutt had set his own house at fire on 28.4.1988 at 2:00 P.M. It was also stated that before one week of the said incident, he had brutally beaten his wife and children due to which his wife along with her children and animals was compelled to live in her parental house. It was also stated in the FIR that appellant was also threatening the other people of the village to set their houses at fire also and he was also creating problems to the villagers. With the same averments, the FIR was given Ex.Ka-1 on 29.4.1988 at 8:00 A.M. to Patti Patwari Circle Garkot, Distt. Pithoragarh. On the basis of this report, the Patwari prepared a Chik FIR and that Chik FIR is Ex.Ka-3. Ex.Ka-2 is the signature of Dharmanand, P.W.3 on the report given by villagers to the Patwari. The investigation of the case was started by P.W.5 Ramesh Chandra Murari/Patwari and he had arrested the appellant on

29.4.1988 and a Fard in this regard was also prepared i.e. Ex.Ka-4. The Patwari inspected the burned house and prepared a Fard i.e. Ex.Ka-5. During the course of investigation, he had also prepared the site plan of the place of occurrence, i.e. Ex.Ka-6. He had also prepared a Fard of taking the debris of burnt house into possession, i.e. Ex.Ka-7. After completing the investigation, the Patwari/I.O. submitted the charge sheet against the appellant on 23.05.1988, that charge sheet is Ex.Ka-8.

3. Learned Chief Judicial Magistrate, Pithoragarh has committed the case to the court of Sessions under section 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C.

4. On 05.07.1988, the Sessions Judge, Pithoragarh framed the charge against the appellant Laxmi Dutt u/s 436 of IPC. The charge was read over and explained to the appellant who pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution has examined P.W.1 Raghuvar Dutt, Pradhan of the village who has lodged the report along with other villagers, P.W.2 Manorath, eye witness, P.W.3 Dharamanand, who is also an eyewitness of the case, P.W.4 Sheesh Ram, father of appellant and P.W.5 Ramesh Chand Murari, Patwari/I.O. of the case.

6. Thereafter, the statement of the appellant-Luxmi Dutt was recorded u/s 313 of Cr.P.C. who had admitted that he himself had set the house of his father Sheesh Ram at fire. However, he had not produced any oral or documentary evidence.

7. After appreciating the evidence on record and after hearing learned counsel for the parties, the learned Sessions Judge, Pithoragarh vide his judgment and order dated 22.08.1988 convicted the appellant-Luxmi Datt under Section 436 of IPC and sentenced him for four years R.I. Against the said judgment and order dated 22.8.1998, the appellant has preferred the present jail appeal.

8. I have heard Sri Kuldeep Singh Rawal, learned amicus curiae for the appellant and Sri Harish Pujari, learned Addl. G.A. for the State and perused the entire material available on record.

9. To prove its case, the prosecution has examined P.W. 1 Sri Raghuvar Dutt who has stated in his statement that he is the Pradhan of Village Garkot continuously from the last six years and present appellant Luxmi Dutt was known to him and appellant is resident of Mangtola Tok of Village Malla Garkot and residence of appellant from his house is about two Kms. The father of appellant namely Sheesh Ram was alive. The father of the appellant had constructed a two storey house about 20 years before and the villagers had told him that this house was constructed by Sheesh Ram for the remaining four brothers of the appellant and the house was also in possession of Sheesh Ram and he had also locked the said house. In one part of ground floor of the house, appellant was living and in another part, father of the appellant was in possession and he had locked the house. There were four more brothers of the appellant who were living in Pithoragarh. He had heard that on 28.4.1988 at 2:00 P.M. appellant had set his own house at fire and he was not present in his house at that time. In the night at 8:45-9:00 P.M., Gauri Dutt and others had informed him that appellant had set his own house at fire and was also saying to set the houses of other villagers at fire. Then he had reached on the place of occurrence and saw the burned house and then he had dictated the FIR to Suresh i.e. Ex.Ka-1. After that he and other villagers had signed on that report and that report was sent by Suresh to Patwari on the next day morning. The wife along with her children of the appellant had already gone to her parental house and she had also taken the animals with her. In cross-examination he has stated that appellant Laxmi Dutt is not the owner of the said burned house and it was written by mistake in the report. This

witness was cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his evidence. The evidence of this witness is natural, believable and reliable.

10. P.W.2 is Manorath who has stated in his statement that the said incident took place on 28.4.1988 between 2-2:30 P.M. At that time he was sleeping in his house. He got up after hearing the noise of children that fire had set up in the house. Then he came out from his house and saw that fire had set up in the house of Laxmi Dutt in which Laxmi Dutt was residing. Then he had cried but due to the fear of Laxmi Dutt, he had not gone on the spot. Laxmi Dutt was armed with axe or Lathi in his one hand and in the other hand he was having burning wheat straw with which he was burning the house. After hearing the noise, Dharmanand also reached on the place of occurrence and after that so many people had collected over there. The entire house was set on fire by the appellant and the said house was a double storeyed house which was got constructed by Sheesh Ram before 20-22 years. In the second floor of that house, father and mother of appellant were residing. At the time of incident, father and mother of appellant had gone somewhere in Lohaghat and they had also locked the house. He has also stated that neither the appellant was living in upper part of the house nor he was having any share in that part. The appellant was living in one room in the ground floor. On the date of incident, the wife along with children of appellant had gone in her parental house and a loss of more than Rs. 1.00 lacs was occurred due to the fire. The appellant was living separately from his father and brothers. This witness was also cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his evidence. The evidence of this witness is also natural, believable and reliable.

11. P.W.3 is Dharmanand who has stated that he was a resident of Mungtola Tok in Vill.Malla Garkot and he was living in the top and appellant was living in the lower part and they both are the resident of Mungtola. The appellant was living in his father's house and rest of the four brothers of the appellant were living in Pithoragarh. The brothers of the accused had got no property in Pithoragarh. In Pithoragarh they were living in rented house. In the house of Mungtola, household items of father of appellant were there and lock was also there and the house was in possession of the father of the appellant. In the lower part of the said house, the appellant was living from his father separately. On 28.4.1988 at about 2-2:15 P.M., he was sleeping after taking the food and then he heard the noise of the children that fire had set up in the house. Then he came out of his house and saw that the house of Sheesh Ram was burning and appellant was armed with axe in his one hand and in the other hand he was having burning straw. Due to the fear of the appellant he had not gone on the place of occurrence and appellant was screaming that he will set on fire the houses of other people also. In the evening, 10-12 persons had collected there and surrounded the appellant and informed the Sabhapati also and then Sabhapati had also come on the place of occurrence and after enquiring from the villagers, Sabhapati had dictated the report and he also signed on that report and also identified his signature on the report and this signature was marked as Ex.Ka-2. He had further submitted that the cost of house is about more than rupee one lacs and the entire house was burned. This witness was also cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his evidence. The evidence of this witness is also natural, believable and reliable.

12. P.W.4 is Sheesh Ram, father of the appellant who has stated that appellant Laxmi Dutt is his son and except

him, he is having four more sons and all those four sons are living in Pithoragarh and his sons are not having any property in Pithoragarh. His two sons were doing business in Pithoragarh and his one son was studying in the school and one son is in the army. Appellant Laxmi Dutt was living separately from him for the last 18-20 years. In Mangtola Tok of Vill. Garkot, he had constructed his own house about 20-22 years before. The said house was three storeyed and in the ground floor of the house, in one room appellant was living and except this room appellant had one tin shed and that tin shed was in the share of the appellant. In one room of the said house, appellant had taken the possession forcibly and in second storey of the house, he was living along with his wife and total household items were there inside the house and in the other part of the ground floor also, he was in possession. The other agricultural land and property which was situated in Mungtola was also in his name. The behaviour of the appellant was not good with him and his sons due to which his sons had left the village and came to Pithoragarh. The appellant wanted that the entire property should be in his possession. He and his wife along with his handicapped daughter were living in his second daughter's house from last 18 months. The appellant had harassed him and due to this reason he had left the village and the cost of that house was about 1.00-1.50 lacs and the house was completely burned. This witness was also cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his evidence. The evidence of this witness is also natural, believable and reliable.

13. P.W.5 is Ramesh Chand Murari, Patwari/IO of the case who has stated that on 29.4.1988 he was present in the Headquarter in Patti Garkot. Suresh Chand had come along with the report Ex.Ka-1 at 8:00 A.M. and on the basis of that report Ex.Ka-1, he had prepared the Chik FIR i.e. Ex.Ka-3 and

had started the investigation. On the same day, he had reached on the place of occurrence at 11:00 A.M. and appellant Laxmi Dutt was handed over to him by the villagers and thereafter the appellant was arrested by him and a Fard was also prepared on the spot i.e. Ex.Ka-4. He had inspected the place of occurrence and prepared a Fard of the burned house i.e. Ex.Ka-5 and also prepared the site plan of the place of occurrence i.e. Ex.Ka-6. On the spot he found burned ashes, burned clay, burned wooden pieces, bowl, open tiffin, iron chain, pieces of stones of roof and burned piece of aluminum which were sealed on the spot and were marked as Ex.1 to Ex.8 and a Fard was also prepared i.e. Ex.Ka-7. During the course of investigation, he had recorded the statements of the witnesses and after completing the investigation, he had submitted the charge sheet i.e. Ex.Ka-8. During the investigation, he came to know that the father of the appellant was the owner of the house.

14. After that statement of the appellant was recorded u/s 313 Cr.P.C. He has admitted the incident and in reply to question no.3 he has stated that in one room of the ground floor, he was living and his father was living in the upper storey and for the last 1-1½ years his father was not living there. In reply to question no.4 he has stated that his father had not given him any separate house and he was living in the ground floor of the house and his brother had told him to live in the ground floor. In reply to question no. 8 he has stated that on 27th at about one o'clock in the day he had set the house of his father at fire. In reply to question no.9 he had stated that due to the fire, loss of more than Rs.1.50 lacs was occurred. In reply to question no.11 he had stated that he himself had set the house at fire. In reply to question no. 12 he had stated that when the people had challenged him then he had told them that he will also set their houses at fire.

15. Sri Kuldeep Singh Rawal, learned amicus curiae for the appellant submitted that the appellant had admitted that he himself had set his father's house at fire due to which loss of Rs.1.50 lacs was occurred. He further submitted that appellant-Luxmi Dutt has served out his sentence as awarded to him by learned Sessions Judge, Pithoragarh for four years R.I. and he has been released after serving out his sentence. Sri Harish Pujari, learned Addl. G.A. for the State has filed a fax copy of the letter sent by S.P. Almora dated 18.7.2007 in which it has been stated that the appellant has been released on 1.6.1991 from the jail after serving out his sentence in the above S.T. No.18/88 u/s 436 IPC. For this reason, learned amicus curiae for the appellant submitted that now the appeal has become infructuous and he does not want to press his appeal.

16. Even otherwise, from the evidence discussed above, it is proved beyond reasonable doubt that the appellant had set his father's house at fire which was constructed by his father 20-22 years before from the date of said incident and due to this, a loss of Rs.1. 50 lacs was occurred to his father and appellant was himself living in one room in the ground floor separately, though he was not the owner of that house. Sheesh Ram, father of the appellant was having five sons including the appellant and rest of the four brothers were living in Pithorgarh due to the fear of the appellant because appellant had harassed them and compelled them to leave the village as he wanted to get the total property in his possession. There is some other property also in Mungtola which was also in the name of Sheesh Ram and not in the name of appellant. P.W. 1 Raghuvar Dutt, who is a hearsay witness, has lodged the FIR and proved the FIR Ex.Ka- 1 along with other villagers and P.W.3 Dharmanand has also proved his signatures on that report which were marked as Ex.Ka-2. P.W.2 Manorath and P.W. 3. Dharmanand had seen the present appellant while

setting the house of his father Sheesh Ram at fire. P.W.4 Sheesh Ram has also stated that at the time of incident he was not at home and he had gone Lohaghat and he was living in his second daughter's house along with his wife and handicapped daughter due to the reason that appellant was harassing him. In this way, from the statement of P.W.2 Manorath and P.W.3 Dharmanand who are the eyewitnesses of the said incident, it is proved that appellant had set the house of Sheesh Ram at fire and the total household articles in the house were burned and a total loss of Rs.1.50. lacs was caused due to this fire to Sheesh Ram. At that time, Sheesh Ram, father of the appellant was not at home due to the fear of the appellant. Even otherwise, in the statement recorded u/s 313 Cr.P.C. of the appellant, he had admitted in the trial court that he had set his father's house at fire.

17. Thus, from the evidence discussed above and from the statement of appellant himself, the case u/s 436 IPC is proved against the appellant beyond reasonable doubt and the sentence of four years R.I. as awarded by learned Sessions Judge as per the facts and circumstances narrated above, is just and proper and I am also in full agreement with the judgment and order dated 22.8.1988 passed by Sessions Judge, Pithoragarh.

18. For the reasons recorded above, the appeal is devoid of merit and is hereby dismissed. The judgment and order dated 22.8.1988 passed by Sessions Judge, Pithoragarh is hereby confirmed.

19. As per the letter sent by S.P. Almora, the appellant has been released on 1.6.1991 from the jail after serving out his sentence in the above S.T. No.18/88 u/s 436 IPC.

(Dharam Veer, J.)

Rajeev Dang